

1 [SEE SIGNATURE PAGES FOR COUNSEL NAMES]

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4 UNITED STATES DISTRICT COURT  
 5 NORTHERN DISTRICT OF CALIFORNIA  
 6 SAN FRANCISCO DIVISION

7

8 EDWARDS LIFESCIENCES LLC and  
 9 ENDOGAD RESEARCH PTY LIMITED,

10 Plaintiffs,

11 v.  
 12 COOK INCORPORATED and W.L.  
 13 GORE & ASSOCIATES, INC.,

14 Defendants.

15 No. C 03-3817 JSW (WDB)

16 ~~PROPOSED~~ ORDER AND  
 17 STIPULATION REGARDING  
 18 ISSUANCE OF COMMISSION FOR  
 19 TAKING DEPOSITIONS IN  
 20 AUSTRALIA

21 Judge Jeffrey S. White  
 22 Magistrate Judge Wayne D. Brazil

23 HOWARD  
 24 RICE  
 25 NEMEROVSKI  
 26 CANADY  
 27 FALK  
 28 & RABKIN  
 29 A Professional Corporation

30 Plaintiffs, Edwards Lifesciences LLC and EndoGAD Research Pty Limited, and  
 31 Defendants, Cook Incorporated and W.L. Gore & Associates, Inc., by and through their  
 32 undersigned counsel, hereby submit this Joint Stipulation Regarding Issuance of Commission  
 33 for Taking Depositions in Australia. The stipulation is based on the following recitals.

34 WHEREAS, on May 9, 2007, the Court entered its Order Following Hearing on Plaintiffs'  
 35 Motion to Compel Defendant Cook; Defendant Cook's Motion to Compel; and Defendant  
 36 Gore's Motion to Compel (*see* Docket #473);

37 WHEREAS, the Order states, among other things, that Plaintiffs must offer Doctors Yu  
 38 and White for deposition (*see* Order at 2:20-24);

39 WHEREAS, Doctors Yu and White are Australian nationals who live and work in  
 40 Australia;

41 WHEREAS, the depositions of Doctors Yu and White are currently scheduled for June 27,  
 42 28, and 29 in Sydney, Australia, as indicated in the Notice of Deposition of Dr. Weiyun Yu  
 43 (attached as Exhibit A) and Notice of Deposition of Dr. Geoffrey White (attached as Exhibit B);

44 [PROPOSED] ORDER AND STIPULATION REGARDING ISSUANCE OF COMMISSION  
 45 C03-3817 JSW (WDB)

1           WHEREAS, Dr. White and Dr. Yu have previously appeared for depositions in the United  
 2 States in this action;

3           WHEREAS, Dr. White and Dr. Yu have agreed to voluntarily appear for further  
 4 depositions in Australia;

5           WHEREAS, the parties request that the Court issue a commission pursuant to FED. R. CIV.  
 6 P. 28(b) for purposes of taking these depositions in Australia;

7           NOW, THEREFORE, the parties jointly stipulate to the issuance of a commission by the  
 8 Court – directed to the attorneys representing the parties and the court reporter retained to attend  
 9 and transcribe the depositions – to administer the oath and take testimony in Australia from  
 10 these witnesses, pursuant to FED. R. CIV. P. 28(b).

11           Dated: June 18, 2007

By: s/ Hugh A. Abrams

12           David T. Pritikin  
 13           Hugh A. Abrams  
 14           Richard T. McCaulley  
 15           SIDLEY AUSTIN LLP  
 16           One S. Dearborn Street  
 17           Chicago, Illinois 60603

18           Russell L. Johnson  
 19           Matthew T. Powers  
 20           Carrie W. Cotter (Pro Hac Vice)  
 21           SIDLEY AUSTIN LLP  
 22           555 California Street, Suite 5000  
 23           San Francisco, California 94104-1715

24           *Attorneys for Plaintiffs,*  
 25           EDWARDS LIFESCIENCES LLC and  
 26           ENDOGAD RESEARCH PTY LIMITED

27           Dated: June 18, 2007

By: s/ Jeffry M. Nichols

28           Richard A. Kaplan  
 29           Thomas J. Filarski  
 30           Bradley G. Lane  
 31           Jeffry M. Nichols  
 32           Julie L. Leichtman  
 33           BRINKS HOFER GILSON & LIONE  
 34           NBC Tower, Suite 3600  
 35           455 North Cityfront Plaza Drive  
 36           Chicago, Illinois 60611-5599

37           Dirk M. Schenkkan (No. 72533)  
 38           Jeffrey E. Faucette (No. 193066)

[PROPOSED] ORDER AND STIPULATION REGARDING ISSUANCE OF COMMISSION

C03-3817 JSW (WDB)

1 Jason S. Takenouchi (No. 234835)  
 2 HOWARD RICE NEMEROVSKI CANADY  
 3 FALK & RABKIN  
 4 A Professional Corporation  
 5 Three Embarcadero Center, 7th Floor  
 6 San Francisco, California 94111-4024

7 *Attorneys for Defendant,*  
 8 COOK INCORPORATED

9  
 10 Dated: June 18, 2007

11 By: s/ Jennifer Bianrosa

12 David H. Pfeffer  
 13 Christopher K. Hu  
 14 Gerard A. Haddad  
 15 Jennifer Bianrosa  
 16 MORGAN & FINNEGAN, L.L.P.  
 17 3 World Financial Center  
 18 New York, NY 10281-2101

19 Mark J. Linderman  
 20 John Querio  
 21 SONNENSCHEIN NATH & ROSENTHAL  
 22 525 Market Street, 26th Floor  
 23 San Francisco, CA 94105

24 *Attorneys for Defendant,*  
 25 W.L. GORE & ASSOCIATES, INC.

26 I, Jeffry M. Nichols, am the ECF User whose ID and password are being used to file this  
 27 [PROPOSED] ORDER AND STIPULATION REGARDING ISSUANCE OF COMMISSION  
 28 FOR TAKING DEPOSITIONS IN AUSTRALIA. In compliance with General Order 45, X.B.,  
 I hereby attest that Hugh A. Abrams and Jennifer Bianrosa have concurred in this filing.

29 Dated: June 18, 2007

30 By: s/ Jeffry M. Nichols

1 PURSUANT TO STIPULATION AND FED. R. CIV. P. 28(B), IT IS HEREBY  
2 ORDERED that the attorneys representing the parties and/or the court reporter retained to attend  
3 and transcribe the depositions of Dr. Weiyun Yu and Dr. Geoffrey White on June 27, 28 and 29,  
4 2007, are commissioned to administer the oath and take testimony from the witnesses in  
5 Australia.

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IT IS SO ORDERED:

8 June 21, 2007  
9 Date

Wayne D. Brazil  
10 Magistrate Judge Wayne D. Brazil

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HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

## PROOF OF SERVICE

I, Kinson Yee, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Three Embarcadero Center, 7th Floor San Francisco, California 94111-4024. On June 18, 2007, I served the following document(s) described as: [PROPOSED] ORDER AND STIPULATION REGARDING ISSUANCE OF COMMISSION FOR TAKING DEPOSITIONS IN AUSTRALIA, as follows:

<p><b>VIA E-MAIL &amp; FEDERAL EXPRESS:</b></p> <p>Russell L. Johnson (rljohnson@sidley.com) Matthew T. Powers (mpowers@sidley.com) SIDLEY AUSTIN LLP 555 California Street, Suite 5000 San Francisco, California 94104-1715</p>	<p><b>VIA E-MAIL &amp; FEDERAL EXPRESS:</b></p> <p>Mark J. Linderman (mlinderman@sonnenschein.com) John Querio (jquerio@sonnenschein.com) SONNENSCHEIN NATH &amp; ROSENTHAL 525 Market Street, 26th Floor San Francisco, CA 94105</p>
<p><b>VIA E-MAIL &amp; FEDERAL EXPRESS:</b></p> <p>David T. Pritikin (dpritikin@sidley.com) Hugh A. Abrams (habrams@sidley.com) Carrie W. Cotter (ccotter@sidley.com) SIDLEY AUSTIN LLP One S. Dearborn Street Chicago, Illinois 60603</p>	<p><b>VIA E-MAIL &amp; FEDERAL EXPRESS:</b></p> <p>David H. Pfeffer (dpfeffer@morganfinnegan.com) Christopher K. Hu (chu@morganfinnegan.com) John T. Gallagher (jgallagher@morganfinnegan.com) Jennifer Bianrosa (jbianrosa@morganfinnegan.com) MORGAN &amp; FINNEGAN, L.L.P. 3 World Financial Center New York, NY 10281-2101</p>

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on June 18, 2007.

Kiell

Case 3:03-cv-03817-JSW Document 474-2 Filed 06/18/2007 Page 1 of 3

1 Richard A. Kaplan, *Pro Hac Vice*  
2 Thomas J. FilarSKI, *Pro Hac Vice*  
3 Bradley G. Lane, *Pro Hac Vice*  
4 Jeffry M. Nichols, *Pro Hac Vice*  
5 Julie L. Leichtman, *Pro Hac Vice*  
6 BRINKS HOFER GILSON & LIONE  
7 NBC Tower, Suite 3600  
8 455 North Cityfront Plaza Drive  
9 Chicago, Illinois 60611-5599  
10 Telephone: 312/321-4200  
11 Facsimile: 312/321-4299

12 Dirk M. SchenkkAN (No. 72533)  
13 Jeffrey E. Faucette (No. 193066)  
14 Jason S. Takenouchi (No. 234835)  
15 HOWARD RICE NEMEROVSKI  
16 CANADY FALK & RABKIN  
17 A Professional Corporation  
18 Three Embarcadero Center, 7th Floor  
19 San Francisco, California 94111-4024  
20 Telephone: 415/434-1600  
21 Facsimile: 415/217-5910

22 *Attorneys for Defendant,*  
23 COOK INCORPORATED

24 UNITED STATES DISTRICT COURT  
25 NORTHERN DISTRICT OF CALIFORNIA  
26 SAN FRANCISCO DIVISION

27 EDWARDS LIFESCIENCES LLC and  
28 ENDOGAD RESEARCH PTY LIMITED,

29 Plaintiffs/Counterclaim  
30 Defendants,

31 v.  
32 COOK INCORPORATED and  
33 W.L. GORE & ASSOCIATES, INC.,  
34 Defendants/Counterclaim  
35 Plaintiffs.

36 Civil Action No. 03-3817 JSW (WDB)

37 **COOK'S NOTICE OF DEPOSITION OF**  
38 **WEIYUN YU**

39 Judge Jeffrey S. White  
40 Magistrate Judge Wayne D. Brazil

41 TO: COUNSEL OF RECORD ON THE ATTACHED SERVICE LIST

42 Pursuant to Magistrate Judge Brazil's Order dated May 9, 2007, PLEASE TAKE

43 NOTICE that, commencing at 8:30 a.m. on June 28, 2007, at a conference room at the Shangri-

Case 3:03-cv-03817-JSW Document 474-2 Filed 06/18/2007 Page 2 of 3

1 La Hotel Sydney, 176 Cumberland Street, The Rocks, Sydney NSW 2000, Australia, or at such  
 2 other time and/or place as the parties mutually agree, Cook Incorporated, by its attorneys, will  
 3 take the deposition of WEIYUN YU in connection with the above-captioned action.  
 4

5 The deposition will take place upon oral examination pursuant to Federal Rule of Civil  
 6 Procedure 30, and will be recorded by sound, sound-and-visual (e.g., video), and/or  
 7 stenographic means before a notary public or other officer authorized by law to administer  
 8 oaths. The deposition will continue from day-to-day until completed, with such adjournments as  
 9 to time and place as may be necessary.  
 10

11 You are requested to produce the witness at the stated time and place and are invited to  
 12 attend and cross-examine.  
 13

14 Dated: June 18, 2007

15 By: 

16 Richard A. Kaplan  
 17 Thomas J. Filarski  
 18 Bradley G. Lane  
 19 Jeffry M. Nichols  
 Julie L. Leichtman  
 BRINKS HOFER GILSON & LIONE  
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 Three Embarcadero Center, 7th Floor  
 San Francisco, California 94111-4024

23  
 24 *Attorneys for Defendant,*  
 25 COOK INCORPORATED  
 26  
 27  
 28

**PROOF OF SERVICE**

1 I, Jeff Nichols, declare:

2 I am a resident of the State of Illinois and over the age of eighteen years, and not a party  
 3 to the within action. On June 18, 2007, I served the following document(s) described as:  
 4 COOK'S NOTICE OF DEPOSITION OF WEIYUN YU,

<p>5</p> <p>6 <b>VIA E-MAIL &amp; FEDERAL EXPRESS:</b></p> <p>7 Russell L. Johnson    (rljohnson@sidley.com)</p> <p>8 Matthew T. Powers    (mpowers@sidley.com)</p> <p>9 SIDLEY AUSTIN LLP    555 California Street, Suite 5000    San Francisco, California 94104-1715</p>	<p>5</p> <p>6 <b>VIA E-MAIL &amp; FEDERAL EXPRESS:</b></p> <p>7 Mark J. Linderman    (mlinderman@sonnenschein.com)</p> <p>8 John Querio    (jquerio@sonnenschein.com)</p> <p>9 SONNENSCHEIN NATH &amp; ROSENTHAL    685 Market Street, 6th Floor    San Francisco, CA 94105</p>
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19 I am readily familiar with the firm's practice of collection and processing correspondence  
 20 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
 21 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
 motion of the party served, service is presumed invalid if postal cancellation date or postage  
 meter date is more than one day after date of deposit for mailing in affidavit.

22 I declare under penalty of perjury that the foregoing is true and correct. Executed at  
 23 Chicago, Illinois on June 18, 2007.

24   
 25

Case 3:03-cv-03817-JSW Document 474-3 Filed 06/18/2007 Page 1 of 3

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 2 Thomas J. Filarski, *Pro Hac Vice*  
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 20 Defendants,

21 COOK'S NOTICE OF DEPOSITION OF  
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23 v.  
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Judge Jeffrey S. White  
 Magistrate Judge Wayne D. Brazil

26 Defendants/Counterclaim  
 27 Plaintiffs.

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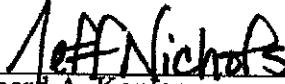
Case 3:03-cv-03817-JSW Document 474-3 Filed 06/18/2007 Page 2 of 3

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